**STATE OF MICHIGAN**
**IN THE SUPREME COURT**

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An Appeal from the Court of Appeals
Markey, P.J., and Fitzgerald and Owens, JJ

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LINDA C. HODGE,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee

Supreme Court Docket No. 140493

Court of Appeals Docket No. 308723
(On Remand)

Wayne County Circuit Court Case
No. 10-012109-AV

36th District Court Case No. 08-133735

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# DEFENDANT-APPELLEE, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S, BRIEF ON APPEAL

***ORAL ARGUMENT REQUESTED***

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## COUNTER-STATEMENT OF QUESTIONS PRESENTED

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The Plaintiff-Appellant, Linda Hodge, answers, "**No**."

The Defendant-Appellee, State Farm Mutual Automobile Insurance Company, answers, "**Yes**."

The Court of Appeals answers, "**Yes**."

The Wayne County Circuit Court answers, "**Yes**."

The 36th District Court answers, "**No**."

II. ACCORDING TO *FIX v SISSUNG*, 83 MICH 561; 47 NW 340 (1890), IS JURISDICTION OBTAINED IF FRAUD UPON THE COURT IS APPARENT?

This issue was not addressed by the parties in the lower courts, but was raised in this Honorable Court's Order granting Plaintiff-Appellant's Application for Leave to Appeal

## SUMMARY OF ARGUMENT

The captioned matter stems from a jury trial in which Plaintiff-Appellant, Linda Hodge, ultimately requested that the jury return an award in her favor in excess of $160,000.00 – **greater than *six times* the district court's jurisdictional limit.** Unlike many other causes of action, no-fault cases are capable of specific pecuniary calculation as the plaintiff/claimant is seeking reimbursement for medical bills, wage loss, attendant care, etc. As such, it can certainly be determined whether the matter falls within the district court's $25,000.00 jurisdictional limit or exceeds that maximum. As soon as it is determined that the claim between the parties exceeds the district court's jurisdictional limit, the case should be transferred to circuit court as expressly set forth in MCR 2.227(A) in order for the litigation to continue.

Such is the case here. While State Farm was able to demonstrate from the discovery exchanged between the parties that the amount in controversy vastly exceeded the district court's $25,000.00 maximum, the district court, however, refused to limit Ms. Hodge's claims in any respect and to transfer the action to the Wayne County Circuit Court for continued proceedings. In doing so, it enabled Ms. Hodge ultimately to supply the district court jury with exact mathematical calculations to support her demand for no-fault benefits in the minimum aggregate amount of $163,074.00 -- a roadmap to reach its ultimate verdict of $85,000.00. She waived nothing in this action and continued to present a grossly excessive amount in controversy for the district court venue.

The Court of Appeals and Circuit Court appropriately recognized on appeal that the district court committed reversible error when it permitted Ms. Hodge to present unlimited demands when its jurisdiction over civil matters is expressly limited by statute to claims where the amount in controversy does not exceed $25,000.00. Ms. Hodge has presented no legitimate

basis to compel this Honorable Court to reject the Circuit Court's determination (*see*, Plaintiff-Appellant's Exhibit E) and reinstate the district court's Judgment in this case.

## COUNTER-STATEMENT OF FACTS

### FACTUAL BACKGROUND AND PROCEDURAL HISTORY[1]

State Farm must regretfully reject the Statement of Facts in Ms. Hodge's Brief on Appeal since that Statement of Facts does not comply with MCR 7.212(C)(6). The Statement supplied by Ms. Hodge does not fully state all material facts, both favorable and unfavorable, pertinent to a resolution of this matter. Accordingly, State Farm is compelled to prepare and present the instant **Counter-Statement of Facts** so that this Honorable Court will have a fair and accurate understanding of the instant litigation, the claims advanced by Ms. Hodge in the 36th District Court, and will be able to render a decision in this matter, which is an issue of first impression, that is in accord with the facts and the applicable law.

This matter stems from an automobile accident that allegedly occurred on January 15, 2005, and involves claims for various first-party benefits, including significant attendant care benefits, sought under Michigan's No-Fault Act, MCL 500.3101, *et seq*, by Ms. Hodge. (Plaintiff's Complaint, ***Exhibit 1***).[2] She commenced suit against State Farm in the 36th Judicial

[1] The factual background and procedural history of this matter is somewhat intertwined in connection with the jurisdictional issue to be determined by the Court.

[2] This is actually the second case Ms. Hodge filed for claims allegedly arising out of the same motor vehicle accident. Notably, on or about January 17, 2006, she filed her original Complaint in the 36th District Court in the action entitled, *Hodge v Allstate Insurance Company and State Farm Mutual Automobile Ins Co*, Case No. 06-106677. Two other actions stemming from the January 15, 2005 accident were consolidated with this action, including *Getwell Medical Transport, et al v Allstate Insurance Company and State Farm Mutual Automobile Ins Co*, and *Progressive Rehabilitation v Allstate Insurance Company and State Farm Mutual Automobile Ins Co*. Thereafter, on July 27, 2006, by Order of the 36th District Court, the above-referenced consolidated actions were transferred to the Wayne County Circuit Court and assigned to the Honorable Gershwin A. Drain (Wayne County Circuit Court Case No. 06-635158-NF). After being transferred to the Circuit Court, the action then proceeded through discovery, the case

District Court on August 11, 2008, asserting a breach of contract claim against the Company. *Id.*[3]

Based upon information garnered during discovery in this action, State Farm became concerned that Ms. Hodge would attempt to seek damages in excess of the district court's jurisdictional limit of $25,000.00, compelling it to file a Motion in Limine to Preclude Any Evidence of Claims Exceeding the Jurisdictional Limit and to Prevent the Jury from Awarding Any Damages Above the Jurisdictional Limit before the commencement of trial.[4] (Motion in Limine, ***Exhibit 2***). For example, during discovery, State Farm served Ms. Hodge with its First Request for Admissions and Interrogatories Directed to Plaintiff. In Request for Admission #4, State Farm requested Ms. Hodge to admit that she was not seeking payment for attendant care benefits. *Id.* at Exhibit A. Ms. Hodge denied the Request, stating attendant care services were rendered "everyday for the past 2 years", as well as that she made a promise to pay her attendant care providers. *Id.*

Additionally, in response to State Farm's discovery requests, Ms. Hodge also provided several Affidavits for Services/Attendant Care Rendered, which were signed by Henry Allen, one of Ms. Hodge's alleged attendant care providers. *Id.* at Exhibit B. Within those Affidavits, Mr. Allen stated that Ms. Hodge agreed to pay him $13.50 per hour for nursing/attendant care.

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evaluation process, a settlement conference, and the parties prepared for trial. However, that action against State Farm was dismissed by the Circuit Court on August 8, 2008. Ms. Hodge then filed another Complaint (i.e., the one underlying the captioned litigation) in the 36th District Court.

[3] Nevertheless, as set forth in her Complaint, Ms. Hodge was not State Farm's policyholder. Rather, State Farm had issued a no-fault policy of insurance to Daniel Moss, who struck Ms. Hodge with an automobile she was driving while she was a pedestrian attempting to cross the road. *Id.* at ¶¶ 4, 5.

[4] Alternatively, State Farm requested that the case be transferred to the Wayne County Circuit Court if Ms. Hodge's claimed damages would not be so limited. *Id.*

*Id.* He further claims to have provided such services 24 hours per day per prescription. *Id.* Therefore, based on Ms. Hodge's responses to State Farm's discovery requests and the records she supplied, State Farm's apparent exposure for her attendant care claim alone exceeded the district court's $25,000.00 jurisdictional limit by nearly ten times.[5]

Ms. Hodge responded in opposition to State Farm's Motion, focusing on the allegations of the underlying Complaint. She asserted that, regardless of what her proofs may be, the amount in controversy between the parties did not exceed $25,000.00. (Plaintiff's Response to Motion in Limine, pp. 1-2, ***Exhibit 3***).

The district court heard oral arguments regarding the jurisdictional issue raised in State Farm's Motion in Limine, among others, on August 27, 2010. Ultimately, it denied the Motion, stating, "…you would be forcing Mr. Fortner to…pick and choose what claims he wants to present before the jury and that would be prejudicial to the Plaintiff in that the jury may buy some of what Mr. Fortner says and not other things that he says…". (8/27/10 Trial Tr., pp. 11-13, ***Exhibit 4***). The matter than proceeded to trial, which extended through September 1, 2010.

Summarizing the claim during closing argument, counsel for Ms. Hodge stated as follows:

* * *

> I think the earliest prescription I have here, I think that's 6/5 – that's 6/5/09.
>
> And according, and according to my calculations, that's about 452 days, 452 days multiplied by $14.00 an hour – I'm sorry, $14.00 an hour multiplied by 24 hours a day is $336.00 per day. Three hundred and thirty-six multiplied by 452 days is $151,822.00 to attendant care alone. I did that at the rate of $14.00

[5] 2 years x 365 days/year = 730 days x 24 hours/day = 17,520 hours x $13.50/hour = $236,520.00. (Motion in Limine, pp. 5-6, ***Exhibit 2***). Further, Ms. Hodge also claimed various unpaid medical bills and transportation charges, exceeding an additional $11,000.00. *Id.*

> an hour.
>
> You all may decide that $14.00 an hour is too high, you may decide is too low. I didn't ask for the whole time period. I just went back to August of 07.
>
> I didn't think that was necessary under the circumstances, you know. That's not what we're here about.
>
> But I do want to make a statement. So I want you all to – I do want you all to be fair in terms of, you know, real – based upon the evidence.
>
> There's also $3,932.00 owed to Dr. Lis-Plannels -- $3,932.00 to Dr. Lis-Plannels.
>
> Four hundred dollars to Mr. Beale.
>
> And $3,920.00 to Dr. Nisar.
>
> If you find any of these payments are more than 30 days overdue and – just looking for bills, several years overdue. If you find any of them overdue, there's interest at 12 per cent.
>
> I don't necessarily care about all the interest, if you want to know the truth of the matter. We don't want all of the interest. Once you find that there is some interest.
>
> Interest calculations are hard. I can't do them. And so – and so I'm not asking for all the interest. You know, couple thousand dollars in interest, $2,000.00, $3,000.00 in interest, if you find payments are overdue. [6]

(8/31/10 Transcript, pp. 77-79, ***Exhibit 6***).

At the conclusion of its deliberations, the jury impaneled in the matter awarded to and/or on Ms. Hodge's behalf benefits in the aggregate amount of $85,957.00, itemized as follows:

| | |
|---|---|
| Attendant care | $75,936.00 |
| Medical bills | $10,021.00 (including interest) |

[6] Additionally, Plaintiff submitted an invoice to the jury from Dr. Chang in the amount of $1,500.00 , for which the jury awarded $1,335.00. (8/27/10 Trial Tr., p. 83, ***Exhibit 5***; 9/1/10 Trial Tr., p. 20, ***Exhibit 7***).

(9/1/10 Trial Tr., pp. 18-20, ***Exhibit 7***; Verdict Form, ***Exhibit 8***).

Ms. Hodge submitted a proposed Judgment to the district court for entry, which State Farm objected to, asserting that the jury's verdict, which vastly exceeded $25,000.00, deprived it of jurisdiction over the matter. (Objections to Judgment, ***Exhibit 9***). On October 1, 2010, the district court, nevertheless, entered its Judgment in the matter over State Farm's objections, reducing the jury's verdict to $25,000.00 plus interest pursuant to MCL 500.3142. (Plaintiff-Appellant's Exhibit D).

Thereafter, State Farm timely filed a Claim of Appeal from the district court's Judgment, which was assigned to the Honorable Brian R. Sullivan of the Wayne County Circuit Court. In addition to the jurisdictional issue discussed herein, State Farm also asserted (1) the district court erred when it determined the interest awarded pursuant to MCL 500.3142 was not included within the court's jurisdictional limit of $25,000.00; (2) the district court erred when it denied State Farm's Motion for Directed Verdict which addressed Ms. Hodge's ability to recover benefits for certain medical bills; (3) the district court abused its discretion when it permitted Ms. Hodge to call State Farm's adjuster as a witness or, in the alternative, when it refused to limit its adjuster's testimony; and (4) State Farm is entitled to a new trial due to the prejudicial and improper comments made by Ms. Hodge's counsel during trial of the action.[7]

As discussed in greater detail in its Brief filed in the Court of Appeals, some delay occurred due to Ms. Hodge's apparent termination and rehiring of her counsel. Arguments conducted on December 16, 2011 focused almost exclusively on State Farm's Objections to Oral Argument as Ms. Hodge had sent a certified letter to all counsel of record and the district court, stating that her attorney was formally terminated on July 25, 2011, and whether State Farm

[7] Notably, issues two through four were never ruled upon by the Court of Appeals or the Circuit Court, both courts having decided the appeals solely on the jurisdictional issue.

possessed standing to raise a concern over whether Ms. Hodge's interests in the appeal were appropriately protected since she terminated her counsel.

Ultimately, on February 1, 2012, the Circuit Court issued its Order Granting Defendant's Appeal from Judgment and Reversing Judgment of Trial. (Plaintiff-Appellant's Exhibit E). Specifically, it determined, "…the jury verdict and subsequent judgment of the 36th District Court in this matter is reversed and vacated for the reason that that court lacked jurisdiction over the subject matter because the amount in controversy exceeded the district court's jurisdictional limits contained in MCL 600.8301." *Id.* at pp. 2-3. It further wrote:

> 1. MCL 600.8301 provides that a district court has exclusive jurisdiction in civil actions when "the amount in controversy does not exceed $25,000.00." The statute expressly limits the authority of the district court to the amount in controversy to $25,000.00.
>
> 2. The amount in controversy in this case was in excess of $25,000.00.
>
> 3. A cause of action which exceeds the upper limit of the district court cannot be pursued in the district court because that court lacks jurisdiction to adjudicate the case. This defect cannot be remedied by the court's limitation of the damages to the maximum amount recoverable in the district court and no authority has been presented to this court which convinces it the district court can so proceed.

*Id.* at p. 2.

Ms. Hodge then filed her Application for Leave to Appeal with the Court of Appeals concerning the Circuit Court's February 1, 2012 Opinion and Order. That Application was denied by the Court on September 24, 2012. (Plaintiff-Appellant's Exhibit A, p. 5a). However, on March 4, 2013, this Honorable Court remanded the matter to this Court, instructing that it consider this issue as on leave granted. *Id.* After conducting a thorough analysis of MCL 600.8301, the cases raised by the parties, and applicable court rules, the Court of Appeals ultimately agreed with the Circuit Court's determination in all respects. It summarized its

opinion as follows:

> ***To summarize, there is nothing in MCL 600.8301(1), MCR 2.227(A)(1), or MCR 2.116(C)(4) that limits the district court's duty-bound jurisdictional query to the pleadings. Plaintiffs Moody and Hodge plainly claimed damages far in excess of the $25,000 "amount in controversy" limit of the district court's subject matter jurisdiction. The district court was required to either dismiss each plaintiff's case or transfer it to the circuit court.*** See *Fox*, 375 Mich. at 242; MCR 2.227(A)(1); MCR 2.116(C)(4). Because the district court failed to do either, the subsequent district court judgments—including that with respect to providers' claims that were consolidated with those of Moody's — are void for want of subject matter jurisdiction. *Fox*, 375 Mich. at 242; *Jackson City Bank & Trust Co*, 271 Mich. at 544.

*Hodge v State Farm Mut Automobile Ins Co, sub nom Moody v Home Owners Ins Co*, 304 Mich App 415, 437-438; 849 NW2d 31 (2014). (Emphasis added).

This Honorable Court then granted leave on February 5, 2015.

## LAW AND ARGUMENT

### I. THE PLAINTIFF-APELLANT DIVESTED THE DISTRICT COURT OF JURISDICTION OVER THIS MATTER WHEN SHE DEMANDED THAT THE JURY RETURN A VERDICT IN HER FAVOR OF AN AMOUNT NO LESS THAN $160,000.00 BASED UPON EVIDENCE PRESENTED TO IT.

#### A. Counter-Standard of Review and Preservation of Issue.

State Farm agrees that the interpretation of statutes presents an issue of law that is reviewed de novo on appeal. *Toll Northville Ltd v Northville Twp*, 480 Mich 6, 10-11; 743 NW2d 902 (2008). *Lapeer Co Clerk v Lapeer Circuit Judges*, 465 Mich 559, 566; 640 NW2d 567 (2002). Furthermore, it adds that whether a trial court has subject matter jurisdiction over a claim presents a question of law that is reviewed de novo on appeal. *Jamil v Jahan*, 280 Mich App 92, 99-100; 760 NW2d 266 (2008); *Ryan v Ryan*, 260 Mich App 315, 331; 677 NW2d 899 (2004).

Because jurisdiction involves the power of a court to hear and decide a cause or matter, *In re Estate of Fraser*, 288 Mich 392, 394; 285 NW 1 (1939), it may be raised at any time, including even if raised for the first time on appeal. *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 630; 684 NW2d 800 (2004); *Lehman v Lehman*, 312 Mich 102, 105-106; 19 NW2d 502 (1945); MCR 2.116(D)(3). "**All courts 'must upon challenge, *or even sua sponte*, confirm that subject-matter jurisdiction exists**....'" *Bezeau v Palace Sports & Entertainment, Inc*, 487 Mich 455, n2; 795 NW2d 797 (2010) (YOUNG, J., dissenting), quoting *Reed v. Yackell*, 473 Mich 520, 540; 703 NW2d 1 (2005) (opinion by TAYLOR, C.J.). (Emphasis added). In fact, a court must take notice sua sponte of a lack of subject matter jurisdiction, regardless of whether the parties raise the issue. *In re AMB*, 248 Mich 144, 166; 640 NW2d 262 (2001).

Although jurisdictional issues may be raised for the first time on appeal, and even by appellate courts, rather than the parties, themselves (*National Wildlife, supra; Bezeau, supra*), State Farm formally contested the district court's jurisdiction in this matter when it filed its Motion in Limine to Preclude Any Evidence of Claims Exceeding the Jurisdictional Limit and to Prevent the Jury from Awarding Any Damages Above the Jurisdictional Limit, or in the Alternative, to Transfer the Case to the Wayne County Circuit Court. (Motion in Limine, ***Exhibit 2***). After listening to the arguments of counsel, the district court denied State Farm's Motion in Limine, primarily because, "…you would be forcing Mr. Fortner to…pick and choose what claims he wants to present before the jury and that would be prejudicial to the Plaintiff in that the jury may buy some of what Mr. Fortner says and not other things that he says…". (8/27/10 Trial Tr., pp. 11-13, ***Exhibit 5***). Additionally, State Farm filed Objections to Plaintiff's Proposed Judgment on Jury Verdict. (Objections to Proposed Judgment, ***Exhibit 9***).

**B. General Rules Regarding Statutory Interpretation And Interpretation of Court Rules.**

As discussed in greater detail below, district courts are courts of ***limited*** jurisdiction, which is conferred by statute. What governs the outcome of this matter is MCL 600.8301, which explicitly directs:

> The district court has ***exclusive*** **jurisdiction** in civil actions **when the amount in controversy *does not* exceed $25,000.00**.

MCL 600.8301(1). (Emphasis added). As discussed in greater detail below, when a court finds that it lacks jurisdiction over an action, it may transfer the action to a court having the requisite jurisdictional authority (*see*, MCR 2.227(A)(1)) or it may dismiss the action. *Fox v Bd of Regents of Univ of Mich*, 375 Mich 238, 240; 134 NW2d 146 (1965).

The rules of statutory construction are well established. In fact, the Michigan Supreme Court directed as follows in *Sun Valley Foods Co v Ward*, 460 Mich 230, 236-237; 596 NW2d 119 (1999):

> …The foremost rule, and our primary task in construing a statute, is to discern and give effect to the intent of the Legislature. *Murphy v Michigan Bell Telephone Co*, 447 Mich 93, 98; 523 NW2d 310 (1994). *See also Nation v W D E Electric Co*, 454 Mich 489, 494; 563 NW2d 233 (1997). This task begins by examining the language of the statute itself. The words of a statute provide "the most reliable evidence of its intent . . . ." *United States v Turkette*, 452 US 576, 593; 101 S Ct 2524; 69 L Ed 2d 246 (1981). If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996). Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent. *Luttrell v Dep't of Corrections*, 421 Mich 93; 365 NW2d 74 (1984).
>
> In interpreting the statute at issue, we consider both the plain meaning of the critical word or phrase as well as "its placement and purpose in the statutory scheme." *Bailey v United States*, 516 US 137, 145; 116 S Ct 501; 133 L Ed 2d 472 (1995). *See also*

> *Holloway v United States*, 526 US 1; 119 S Ct 966; 143 L Ed 2d 1 (1999). As far as possible, effect should be given to every phrase, clause, and word in the statute. *Gebhardt v O'Rourke*, 444 Mich 535, 542; 510 NW2d 900 (1994). The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended. *Aetna Finance Co v Gutierrez*, 96 NM 538; 632 P2d 1176 (1981).

When interpreting a court rule, courts use the same process as with statutory interpretation. *Haliw v City of Sterling Hts*, 471 Mich 700, 706; 691 NW2d 753 (2005). They start by looking to the language of the rule; "[t]he intent of the rule must be determined from an examination of the court rule itself and its place within the structure of the Michigan Court Rules as a whole." *Id.* at 706. When the language is unambiguous, the court must enforce the meaning expressed without further interpretation. *In re KH*, 469 Mich 621; 677 NW2d 800 (2004). Common words are given their everyday plain meaning. *Id.* "When interpreting a court rule or statute, we must be mindful of "the surrounding body of law into which the provision must be integrated...." *Haliw*, 471 Mich at 706, quoting *Green v Bock Laundry Machine Co*, 490 US 504, 528, 109 S Ct 1981, 104 L Ed 2d 557 (1989).

### C. Aptly Recognizing That Plaintiff-Appellant Impermissibly Expanded The Amount In Controversy In This Matter Beyond What Is Properly And Legally Litigated In The District Court Forum, The Court of Appeals and Circuit Court Vacated The District Court's October 1, 2010 Judgment.

Michigan was the first state in the Union to adopt a comprehensive no-fault law in 1972, which went into effect on October 1, 1973. Under this scheme, an injured person is guaranteed what the Legislature considered to be a sufficient and expeditious recovery from his or her own insurer for all expenses incurred for reasonably necessary medical care, recovery, and rehabilitation, as well as some incidental expenses. MCL 500.3107(1). *See also, Muci v State Farm Mut Automobile Ins Co*, 478 Mich 178, 188; 732 NW2d 88 (2007). Indeed, an injured person is eligible to recover ***lifetime*** medical expenses under Michigan's No-Fault Act as long as

such expenses are reasonable and necessary for his or her care, recovery, and rehabilitation. See MCL 500.3107(1)(a). As discussed, the accident underlying this litigation occurred on January 15, 2005, and Ms. Hodge has asserted entitlement to such benefits ("…You have lifetime medical benefits."). (8/27/10 Trial Tr., pp. 17, 27, 68). (*See also*, n 2, *supra*).

Nevertheless, as aptly recognized by the Court of Appeals and Circuit Court, she remains bound by the axiomatic fundamentals of litigation in order to recover any claimed benefits in this case. ***This includes the appropriate forum within which to pursue this action, as well as, more importantly, the specific limitations which attach to the forum chosen.*** Ms. Hodge chose to commence this matter within a district court of this State. However, **the Michigan Legislature expressly restricted the subject matter jurisdiction of all district courts to only those actions in which the amount in controversy between the parties is *no greater than $25,000.00***. MCL 600.8301.

"In general, subject-matter jurisdiction has been defined as a court's power to hear and determine a cause or matter." *In re Lager Estate,* 286 Mich App 158, 162; 779 N.2d 310 (2009), quoting *In re Petition by Wayne Co Treasurer for Foreclosure of Certain Lands,* 265 Mich App 285, 291; 698 NW2d 879 (2005). District courts are courts of limited jurisdiction. *People v Tesen*, 276 Mich App 134, 141; 739 NW2d 689 (2007). Among other things, the Revised Judicature Act of 1967 explicitly restricts that jurisdiction in civil actions to those cases where "**the amount in controversy *does not* exceed $25,000.00**". (Emphasis added). MCL 600.8301(1). In fact, the Michigan Legislature vested the district courts of the State with "exclusive" jurisdiction over such actions. *Id.*

Jurisdiction of the district court has been described as being carved out of the original jurisdiction of the circuit court and the jurisdictional line of demarcation between the district

court and the circuit court is primarily the amount in controversy. *Paley v Coca Cola Co,* 39 Mich App 379; 197 NW2d 478 (1972), judgment aff'd 389 Mich 583; 209 NW2d 232 (1973).[8] The term "controversy" is not defined within MCL 600.8301; however, it has been interpreted to mean a "dispute" or something over which there is a "quarrel" or "strife". *See, Webster's Ninth New Collegiate Dictionary* (1985), p. 285. *See also,* www.thefreedictionary.com/controversy (defining controversy as "a dispute, argument, or debate, esp one concerning a matter about which there is strong disagreement").

When Ms. Hodge commenced this action, she affirmatively asserted that the amount in controversy was less than $25,000.00. (Complaint, ***Exhibit 1***). Specifically, she averred, "The amount in controversy is within the jurisdiction of this court ***because Plaintiff claims damages not in excess of $25,000.00*** …". *Id.* at ¶3. (Emphasis added). However, that allegation is and was untrue. The extent of her demands was confirmed through discovery exchanged between the parties. *Id.*, Exhibits A and B. As discussed in greater detail above, Ms. Hodge specifically provided, among other things, several Affidavits for Services/Attendant Care Rendered (*Id.*, Exhibit B), which included claims for attendant care at the rate of $13.50 per hour, 24 hours per day. Indeed, even at the time the underlying Complaint was filed on August 11, 2008, the claims submitted by Ms. Hodge and/or on her behalf exceeded the district court's jurisdictional limit. For example, just the claims for attendant care allegedly incurred on an annual basis were astronomical (i.e., in excess of $100,000.00). (*See,* State Farm's Motion in Limine, ***Exhibit 2***).[9]

[8] By contrast, "Circuit courts are courts of general jurisdiction, vested with original jurisdiction over all civil claims and remedies 'except where exclusive jurisdiction is given in the constitution or by statute to some other court....' " *Papas v Gaming Control Bd,* 257 Mich App 647, 657; 669 NW2d 326 (2003), quoting MCL 600.605.

[9] 365 days x 13.50 per hour x 24 hours per day = $118,260.00. *Id.* at Exhibit A and Exhibit B.

Therefore, at the time of filing her Complaint on August 11, 2008, Ms. Hodge's claim easily surpassed the district court's jurisdictional limit. (8/31/10 Tr., pp. 77-79, ***Exhibit 6*** ("Three hundred and thirty-six multiplied by 452 days is $151,822.00 to attendant care alone. I did that at the rate of $14.00 an hour. You all may decide that $14.00 an hour is too high, you may decide is too low. I didn't ask for the whole time period. I just went back to August of 07.”))

Even at trial, the claimed damages Ms. Hodge and her counsel placed in front of the jury for consideration in this matter (and hopeful award) not only exceeded the $25,000.00 jurisdictional maximum of the district court, **but did so vastly, *by more than six times that maximum*.** In fact, while explaining the verdict form to the jury impaneled in this action, Ms. Hodge's counsel demanded no-fault benefits on her behalf in the aggregate amount of ***$163,074.00***, at a minimum. As set forth above, he specifically described the amount in controversy between the parties as follows:

* * *

> I think the earliest prescription I have here, I think that's 6/5 – that's 6/5/09.
>
> ***And according, and according to my calculations, that's about 452 days, 452 days multiplied by $14.00 an hour – I'm sorry, $14.00 an hour multiplied by 24 hours a day is $336.00 per day. Three hundred and thirty-six multiplied by 452 days is $151,822.00 to attendant care alone. I did that at the rate of $14.00 an hour.***
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> You all may decide that $14.00 an hour is too high, you may decide is too low. ***I didn't ask for the whole time period. I just went back to August of 07.***
>
> ***I didn't think that was necessary under the circumstances, you know. That's not what we're here about.***[10]

* * *

[10] Rather than voluntarily releasing any portion of the claim as intimated to the jury, Ms. Hodge's claims were limited by application of the one-year-back rule of MCL 500.3145(1).

> ***There's also $3,932.00 owed to Dr. Lis-Plannels -- $3,932.00 to Dr. Lis-Plannels.***
>
> ***Four hundred dollars to Mr. Beale.***
>
> ***And $3,920.00 to Dr. Nisar.***
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> ***If you find any of these payments are more than 30 days overdue and – just looking for bills, several years overdue. If you find any of them overdue, there's interest at 12 per cent.***
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> * * *
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> Interest calculations are hard. I can't do them. And so – and so I'm not asking for all the interest. You know, couple thousand dollars in interest, $2,000.00, $3,000.00 in interest, if you find payments are overdue.

(8/31/10 Transcript, pp. 77-79, ***Exhibit 6***).[11] (Emphasis added).

From those calculations (which were largely known at least during the discovery phase of this action if not from the inception of the matter), the jury ultimately awarded to and/or on Ms. Hodge's behalf benefits in the aggregate amount of $85,957.00, for attendant care benefits, medical bills, and interest pursuant to MCL 500.3142. (9/1/10 Trial Tr., pp. 18-20, ***Exhibit 7***). *See also,* Verdict Form, ***Exhibit 8***. This ***still*** represents ***more than three times*** what is permitted pursuant to MCL 600.8301.

Michigan law provides that a party is bound by his or her pleadings, and the proofs in a case should not vary from admissions so pled. *Angott v Chubb Group of Insurance Companies*, 270 Mich App 465, 470-472; 717 NW2d 341 (2006). *See also, Joy Oil Co v Fruehauf Trailer Co*, 319 Mich 277, 280; 29 NW2d 691 (1947) (a party is bound by his pleadings); *Belobradich v Sarnsethsiri*, 131 Mich App 241, 246; 346 NW2d 83 (1983) (a plaintiff cannot litigate issues or claims not raised in his complaint). Indeed,

[11] *See also,* n 6, referencing Ms. Hodge's submission of an invoice to the jury from Dr. Chang in the amount of $1,500.00, for which the jury awarded $1,335.00.

> [n]otwithstanding the relative unimportance of a variance between pleading and proof in most instances, the general underlying requirement of reasonable conformity still applies. Evidence offered must correspond with and support the material and necessary allegations of the complaint or answer. If the evidence does not, it is subject to objection as irrelevant, unless the pleading is amended to broaden its scope. The problem is more one of admissibility of evidence than of proper pleading, though the basis of the problem is the propriety and sufficiency of the original pleading.

Michigan Pleading and Practice § 21:38 (2002), citing *Mestler v Jefferies,*145 Mich 598 (1906), *Britton v Michigan Central Railroad Co*, 122 Mich 359 (1899), and *Lull v Davis*, 1 Mich 77 (1848).

Consistently, Ms. Hodge claims that subject matter jurisdiction is based only upon the allegations contained within the subject complaint. *See, e.g., Fox v Martin,* 287 Mich 147, 151; 283 NW 9 (1938); *Grubb Creek Action Comm v Shiawassee Co Drain Comm'r,* 218 Mich App 665, 668; 554 NW2d 612 (1996). Charitably, however, the allegations concerning the amount in controversy presented by Ms. Hodge in this case morphed since the filing of the Complaint (but, see, §D, *infra*, which discusses that a court's inquiry is not so limited).[12] Instead of pursuing a case for damages which would "not exceed $25,000.00" as initially alleged, Ms. Hodge presented unlimited claims throughout this action without compunction and which, by the time of trial, amounted to no less than ***$163,074.00*** in her own attorney's words. (8/31/10 Trial Tr., pp. 77-79, 95, ***Exhibit 6***).

Ms. Hodge's argument further ignores the fact that, while Michigan law provides that the proofs in an action must not vary from admissions that have been pled (particularly so

[12] Otherwise, it may be asserted that the allegations of the Complaint, particularly the assertion that "…***Plaintiff claims damages not in excess of $25,000.00*** …" (Complaint, ¶3, ***Exhibit 1***) are patently untrue and tantamount to perpetrating a fraud upon the Court. (Emphasis added). As set forth above, $25,000.00 is not the amount claimed from the jury, nor is it only the amount that was available to be claimed at the time the subject Complaint was filed.

substantively as in the instant matter), that is exactly what the district court improperly endorsed when ruling that it would reduce any excessive jury verdict to the appropriate jurisdictional limit. Indeed, even reducing an excessive jury verdict does not resolve the obstacle present in this matter and ultimately (as well as properly) recognized by the Court of Appeals and the Circuit Court. Notwithstanding the fact that any evidence relating to damages in excess of $25,000.00 was irrelevant pursuant to MCL 600.8301(1), a waste of time, and amounted to needless presentation of cumulative evidence, neither the district court nor the jury ultimately impaneled in that forum possessed the fundamental authority to consider claims beyond $25,000.00. MCL 600.8301. ***Reducing the verdict operates only as a thinly-veiled guise to assert jurisdiction over a matter when there is none.*** Indeed, MCL 600.8301(1) ***does not*** state that a district court has jurisdiction over a claim in which the controversy is more than $25,000.00 so long as it limits its judgment to that amount.

Furthermore, while Ms. Hodge asserts that decisional authority consistently contradicts the decision reached by the Court of Appeals and Circuit Court in this matter, review of the cases she has cited demonstrates otherwise. For example, *Walker v Dinh Thap and Liberty Lloyds Ins Co,* 637 So 2d 1150 (La App 1994) is completely inapposite. Indeed, unlike the instant PIP matter, that case involved the plaintiff's tort claim for bodily injury which is not capable of precise mathematical calculation by the parties. *Id.* at 1151.

Ms. Hodge's reliance on *Brady v Indemnity Ins Co of North America*, 68 F2d 302 (6th Cir 1933) and *AKC, Inc v ServiceMaster Residential/Commercial Services Ltd,* 2013 WL 1891362 (USDC ND Oh 2013) is also misplaced. In each of those cases, the respective plaintiff's stipulated that their damages were a sum certain (particularly in order to defeat federal diversity jurisdiction), and there is no indication in the opinions that the plaintiffs attempted to

introduce evidence of claimed damages greater than what they previously stipulated to. In contrast, there is no stipulation for a sum certain and, as discussed above, Ms. Hodge pursued claims and demanded an award of several times greater than the district court's jurisdictional limit. Again, if the amount in dispute in this matter, truly, was only $25,000.00, (like the plaintiffs in *Brady* and *AKC, Inc*) Ms. Hodge never would have compelled State Farm to defend claims well in excess of that amount.

*Krawczyk v DAIIE*, 117 Mich App 155; 323 NW2d 633 (1982), aff'd in part, rev'd in part, 418 Mich 231; 341 NW2d 110 (1983) similarly leaves Ms. Hodge's argument unsupported. In *Krawczyk*, the Court of Appeals determined that the plaintiff was entitled to no-fault benefits in the amount of $7,746.00 (below the district court's then-jurisdictional limit of $10,000.00). *Id.* at 163. However, it further determined that the district court possessed authority to enter an ultimate judgment in the amount of $12,435.95 as it included judgment interest, costs, and attorney fees. *Id.* According to the Court, interest, costs, and attorney fees are generally "not considered in determining the jurisdictional amount." *Id.* Significantly, *Krawczyk* did not involve a plaintiff with recoverable damages in excess of the jurisdiction of the district court avoiding that limit by relinquishing all but the first $25,000.00 of her claim.

Furthermore, the damages actually sought by the parties in *Etefia v Credit Technologies, Inc*, 245 Mich App 466; 628 NW2d 577 (2001) and *Southfield Jeep, Inc v Preferred Auto Sales, Inc*, 2006 WL 1789020, an unpublished opinion of the Michigan Court of Appeals (Docket No. 256014), rel'd 6/29/06 lend further support for the Court of Appeals and Circuit Court's decision to vacate the Judgment entered by the 36th District Court in this matter. In *Etefia, supra,* and *Southfield Jeep, supra*, the nature of the damages sought in both cases were ***incapable of any certain calculation*** and, as such, precluded transfer of the cases from the circuit court to district

court and vice-versa. For example, in *Etefia*, the plaintiff alleged violations of the Fair Credit Reporting Act (which provided for punitive damages) violations of a malicious prosecution statute (MCL 600.2907), as well as abuse-of-process and invasion of privacy claims. *Id.* at 475. According to the Court, while the case may settle for less than $25,000.00, it could not conclude with legal certainty that the damages failed to exceed the jurisdictional limit of the district court. *Id.* Consequently, it determined that the circuit court erred in transferring the action to the district court. *Id.*

Similarly, in *Southfield Jeep*, *supra*, the defendants filed a counter-claim asserting amorphous causes of action for defamation and intentional interference with business relationships.[13] The defendants sought transfer of the action to the circuit court before trial commenced, but the plaintiff objected, arguing that the $100,000.00 projected loss claimed by the defendants was entirely speculative. *Id.* at *1. The district court refused to transfer the matter, but the defendants "renewed" its motion following a jury verdict that rendered an award in the aggregate amount of $150,000.00 in the defendants' favor. *Id.* The district court agreed to transfer the matter to the circuit court for entry of the judgment.

On review, the Court of Appeals determined that the post-trial transfer of the action was improper pursuant to MCR 4.002, which requires a transfer to occur before any trial. *Id*. at *4. The Court further determined that, because the defendants did not appeal the district court's denial of their pre-trial motion to transfer, they (a) acquiesced in the district court's decision that the damages did not exceed the jurisdictional limit; or (b) chose to forfeit any amount in excess of the district court's jurisdictional limit. *Id.* at *5. Significantly, this Honorable Court vacated the district court's ruling as to the pre-trial motion to transfer, stating this determination of the

[13]The plaintiff filed suit in the district court asserting breach of contract and demanding a total of $18,000.00 from defendants. *Id.* at *1.

district court could be appealed upon entry of a final order disposing of the case. *Southfield Jeep, Inc v Preferred Auto Sales, Inc*, 477 Mich 1061; 728 N.W.2d 459 (2007). It is unknown how this issue was finally resolved following entry of this Court's Order.

Nevertheless, *Southfield Jeep* involved a ***counter-plaintiff*** attempting to ***remove*** a case from a district court on the ground that its claim exceeded the jurisdictional limits. That case does not even remotely support the proposition that a plaintiff may present damage claims in excess of the jurisdictional limit of the district court and ***keep*** the case in the district court (which is the opposite of what was attempted in *Southfield Jeep*) by claiming that s/he is willing to take judgment on only the first $25,000.00 of the actual award.

Additionally, Ms. Hodge's reliance on *Brooks v Mammo*, 254 Mich App 486; 657 NW2d 793 (2003) fares no better. As articulated in that decision, *Brooks* is distinguishable from the circumstances underlying the instant case.

In *Brooks*, the Court of Appeals ultimately determined that a judgment should be entered in the plaintiff's favor in the amount of $25,000.00 following a trial in the district court in which the jury awarded her $50,000.00. *Id.* at 496. In doing so, the Court recognized that the case was improperly transferred from the circuit court to the district court following a mediation evaluation (although the plaintiff pled damages in excess of the district court's jurisdictional limit, the mediation panel valued her case at $3,500.00), and the plaintiff never challenged the circuit court's finding that it lacked jurisdiction over the matter at the time the case was transferred or on appeal. *Id.* at 489, 494-495. Contrary to the present action, the plaintiff in *Brooks* never asserted that the trial of her claims occurred in the wrong forum. Consequently, the Court described that case as a situation where "a trial court erroneously declines to exercise subject-matter jurisdiction that it actually possesses rather than attempts to exercise subject-

matter jurisdiction that it lacks" and determined the issue to be waived. *Id.* at 494-495, n 3. That opinion, therefore, lacks any precedential or instructional benefit in this matter.

In this case, Ms. Hodge never disputed that the claims actually presented by her and/or on her behalf exceeded $25,000.00. (8/31/10 Trial Tr., pp. 77-79, 95, ***Exhibit 6***). Indeed, she revealed her demands in discovery (Motion in Limine, Exhibits A and B, ***Exhibit 2***) and, based on that discovery, her own counsel later provided the jury with the exact mathematical calculations to support her demand for more than $160,000.00.

Consequently, the only options available to Ms. Hodge and the district court in light of the underlying circumstances were restricted to limiting the evidence she introduced during the trial of this action to only those claims which do not exceed $25,000.00 or transferring the matter to the Circuit Court pursuant to MCR 2.227(A)(1). As neither of those options were chosen, the Court of Appeals and Circuit Court properly recognized that the district court committed palpable error when it permitted Ms. Hodge to pursue limitless claims, with no consideration given to the amount in controversy, and deprived itself of jurisdiction to preside over this action.

The district court maintained no authority to preside over this case, including the trial of claims that exceeded its statutorily capped jurisdictional limit. Simply stated, if a plaintiff wants to argue for damages in excess of the district court's jurisdictional limit, then the fundamentals of litigation require that she must file her Complaint and make her case in Circuit Court. Ms. Hodge has presented no legitimate basis upon which the Court of Appeals and the Circuit Court's determination should be disturbed.

### D. In Determining The Amount In Controversy, Courts Are Not Limited To Reviewing The Allegations Of the Complaint.

MCR 2.227(A) provides, in pertinent part, as follows with regard to transfer from a court that lacks jurisdiction:

> (1) ***When the court*** in which a civil action is pending ***determines that it lacks jurisdiction of the subject matter of the action***, but that some other Michigan court would have jurisdiction of the action, the court may order the action transferred to the other court in a place where venue would be proper. If the question of jurisdiction is raised by the court on its own initiative, the action may not be transferred until the parties are given notice and an opportunity to be heard on the jurisdictional issue.

(Emphasis added).[14]

As noted above, court rules are interpreted in the same manner as statutes. *In re KH*, 469 Mich 621, 628 (2004). Unambiguous language shall be enforced as written. *Id.* Furthermore, a court is not permitted to insert language into a court rule which does not appear in the rule itself. *Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60 (2001).

The term "determine" is not specifically defined within MCR 2.227, but, it is interpreted to connote research or investigation. *See*, www.thefreedictionary.com/determine (defining determine as "to establish or ascertain definitely, as after consideration, investigation, or calculation."); www.bing.com/Dictionary (defining determine as "to find out or ascertain something, usually after investigation"); and www.merriam-webster.com (defining determine as "to come upon after searching, study, or effort<we failed to determine the answer to the riddle.").

Significantly, however, the Court Rule ***does not*** limit the method by which a court may make the determination of whether it lacks subject matter jurisdiction. Conversely, in Administrative Order 1998-1, this Honorable Court demonstrated that it knew how to limit methodology, if it so chose, writing:

> A circuit court may not transfer an action to the district court under

[14] This language is similar to that present in MCR 4.201(G)(2)(b), which provides, "If a money claim or counterclaim exceeding the court's jurisdiction is introduced, the court, on motion of either party or on its own initiative, shall order removal of that portion of the action to the circuit court, if the money claim or counterclaim is sufficiently shown to exceed the court's jurisdictional limit."

> MCR 2.227 based on the amount in controversy unless: (1) the parties stipulate to the transfer and to an appropriate amendment of the complaint, see MCR 2.111(B)(2); or (2) ***From the allegations of the complaint***, it appears to a legal certainty that the amount in controversy is not greater than the applicable jurisdictional limit of the district court.

(Emphasis added).

Although State Farm did not file a Motion for Summary Disposition for lack of subject matter jurisdiction pursuant to MCR 2.116(C)(4) in this matter, the language of that Rule, nevertheless, is instructive, particularly when determining the scope of what may be considered when deciding if jurisdiction exists. "In reviewing a motion under MCR 2.116(C)(4), it is proper to consider the pleadings and any affidavits or other documentary evidence submitted by the parties to determine if there is a genuine issue of material fact." *Toaz v Dep't of Treasury*, 280 Mich App 457, 459; 760 NW2d 325, 326 (2008). *See also, Cork v Applebee's of Michigan, Inc*, 239 Mich App 311, 315; 608 NW2d 62, 64 (2000) ("When viewing a motion under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact.") Accordingly, if the Court may examine proofs in addition to pleadings in the determination of a motion under MCR 2.116(C)(4), it should also be permitted to do so under MCR 2.227(A)(1).

In fact, by virtue of the breadth of its language, the express terms of MCR 2.227(A)(1), like MCR 2.116(C)(4), permit a court to look beyond the allegations in a Complaint to determine whether it lacks subject matter jurisdiction, particularly where the amount in controversy, which exceeds the district court's jurisdictional maximum, is explicitly put into evidence, such as in the instant action as set forth above.

The various cases relied upon by Ms. Hodge in her Brief on Appeal fail to substantiate

the determination that she now requests this Honorable Court to make. For example, in *Trost v Buckstop Lure Co*, 249 Mich App 580; 644 NW2d 54 (2002), this Court rejected the plaintiffs' assertions that the circuit court did not possess subject matter jurisdiction over a libel action in which a $4 million default judgment had been entered against them. *Id.* at 586, 587. Specifically, the Court wrote:

> The prior action against Trost alleged libel and was brought in the circuit court. **In Michigan, the circuit courts are courts of general jurisdiction and are vested with "original jurisdiction to hear and determine all civil claims" unless the constitution or statutes provide otherwise.** MCL 600.605; see also M.C.L. § 600.601 and Const. 1963, art. 6, §§ 1, 13. The Legislature has provided for civil actions alleging libel. MCL 600.2911. **In providing for these civil actions, the Legislature did not indicate that libel claims were to be brought in a court other than the circuit court.** *Id.* Thus, it is apparent that Buckstop properly brought its libel action against Trost in the circuit court and that the circuit court had subject-matter jurisdiction over that claim. *Grubb, supra;* MCL 600.601, 600.2911; Const. 1963, art. 6, §§ 1, 13.

*Id.* at 587 (emphasis added).

Similarly in *Fox v Martin*, 287 Mich 147; 283 NW 9 (1938), the Michigan Supreme Court did not need to look at anything other than the complaint to determine whether the trial court possessed subject matter jurisdiction. In *Fox*, the defendant's house was foreclosed to enforce a mechanic's lien, which was subject to the following statutory limitation:

> …The several liens herein provided for shall continue for one (1) year after such statement or account count is filed in the office of the register of deeds, and no longer unless proceedings are begun to enforce the same as hereinafter provided…

*Id.* at 150.

On appeal, the Supreme Court noted:

> From the allegations in the bill of complaint, it appeared that the claim of lien had been filed more than a year before the

commencement of the suit to foreclose.

*Id.* [15]

In *Grubb Creek, supra*, the defendants argued that the circuit court lacked jurisdiction to limit the scope of the work to be done pursuant to a finding of necessity by a board of determination appointed by the county drain commissioner. *Id.* at 667-668. This Court rejected that argument, writing:

> Pursuant to M.C.L. § 280.191; M.S.A. § 11.1191 and M.C.L. § 280.72a; M.S.A. § 11.1072(1), the board of determination's finding of necessity that an existing drain requires improvements and repairs may be reviewed by a circuit court. Here, plaintiffs filed a complaint in the circuit court seeking review of the board's order of necessity. Thus, the court had subject-matter jurisdiction because the allegations listed in the complaint came within the court's subject-matter jurisdiction.

*Id.* at 669.

Consequently, *Grubb* is yet another instance where the Court had no need to go further than the Complaint to determine whether subject matter jurisdiction existed.

*Etefia, supra,* also fails to advance the proposition that Ms. Hodge advances (i.e., only the allegations set forth in a complaint are dispositive of jurisdiction). As noted above, in *Etifia*, the circuit court remanded the case to the district court because it mediated for less than $25,000.00. *Id.* at 469. The Court of Appeals reversed that determination. However, in doing so, the Court held, only, that allegations must be considered, ***not*** that they are dispositive of the entire issue.

[15] It is questionable whether the issue in *Fox* was jurisdictional. Subject matter jurisdiction is the authority to decide cases of the type pleaded in the Complaint. *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 528 (2004). The Supreme Court's opinion makes clear that if suit had been timely filed, the circuit court would have had subject matter jurisdiction. The problem with enforcing the mechanic's lien was not that the circuit court had no jurisdiction, but rather that the suit was untimely.

Indeed, the panel itself considered matters outside the Complaint, which is evidenced by the following passage from its Opinion:

> …AO 1998–1 clearly provides that the allegations of the complaint ***must be considered*** in determining whether the amount in controversy appears to a legal certainty to be within the jurisdictional limit of the district court.
>
> **Our review of the allegations contained in plaintiff's complaint *and the nature of the damages available under the claims* does not lead us to conclude with legal certainty that the amount in controversy does not exceed the jurisdictional limit of the district court.**

*Id.* at 475.

Ms. Hodge's argument fares no better with reliance on *Clohset v No Name Corp,* 302 Mich App 550; 840 NW2d 375 (2012). Significantly, however, *Clohset* is factually inapposite to this action and provides no basis on which to disturb the Court of Appeals and Circuit Court's rulings in this case. Specifically, the Court of Appeals determined in that matter that the district court's entry of a consent agreement of an amount nearly five times the jurisdictional threshold was proper because the case was an equity suit to recover possession of a premises which subjects the district court to a more specific grant of power under MCL 600.8302 to hear suits in equity involving an interest in land. *Id.* at 562. That specific grant of statutory jurisdiction takes precedence over the more general grant of jurisdiction in MCL 600.8301. *Id.* However, any discussion of the district court's general jurisdiction pursuant to MCL 600.8301(1) had no bearing on the plaintiffs' attempt to recover real property.[16]

[16] Ms. Hodge has cited a number of other federal cases, as well as cases from sister jurisdictions, which are inapposite to this matter. The federal cases cited by Ms. Hodge involve ***minimum*** jurisdictional limits, whereas the instant matter is governed by ***Michigan*** law, and involves determination whether the ***maximum*** jurisdictional amount has been exceeded. Moreover, the federal and sister state cases are irrelevant because those jurisdictions do not appear to have a counterpart to MCR 2.227(A)(1). Notably, however, federal courts have recognized that courts

Case law purportedly limiting the jurisdictional inquiry strictly to the face of the Complaint addressed a choice between defining subject matter jurisdiction by the amount stated in the pleading as opposed to defining it by the jury's verdict. That analysis has fallen by the wayside, particularly as evidence by the enactment of certain Court Rules, including MCR 2.227(A)(1). The Court Rules plainly contemplate a broader inquiry, which includes, but it not limited to, the allegations of the Complaint. MCR 2.227(A)(1) (use of the word "determines" connotes an investigation and something more than just the allegations of the Complaint); *Etefia*, 245 Mich App at 475. *Compare*, AO 1998-1.

In this case, Ms. Hodge admittedly sought payment of no-fault benefits that ***vastly*** exceeded $25,000.00, which is indisputably beyond the power of the district court to grant. Given that amount in controversy, this case never should have been in the district court. The Court of Appeals and Circuit Court appropriately recognized this fact, and vacated the jury's

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are not limited to reviewing the allegations of the complaint to determine the amount in controversy in an action. *See, e.g., Jimenez Puig v Avis Rent–A–Car System*, 574 F2d 37, 39 (1st Cir.1978) ("the 'proofs' adduced at trial conclusively show that the plaintiff never had a claim even arguably within the [required] range"). *See also, BEM I, LLC v Anthropologie, Inc*, 301 F3d 548, 552 (CA 7, 2002) ("Events subsequent to removal that merely reveal whether the required amount was in dispute on the date of filing, rather than alter the current amount in controversy, can be considered in deciding what that original amount in controversy was"); *Tongkook Am, Inc v Shipton Sportswear Co*, 14 F3d 781, 785 (CA 2, 1994) ("[W]e cannot ignore what pre-trial discovery revealed—that from the outset, Tongkook, to a "legal certainty," could not recover the statutory jurisdictional amount. A plaintiff's subjective belief, alone, cannot be the controlling factor where, pre-trial, there is "[a] showing that, as a legal certainty, [the] plaintiff cannot recover the jurisdictional amount."); and *McNutt v Gen Motors Acceptance Corp of Indiana*, 298 US 178, 184; 56 S Ct 780, 782-83; 80 L Ed 1135 (1936) ("The act of 1875, in placing upon the trial court the duty of enforcing the statutory limitations as to jurisdiction by dismissing or remanding the cause at any time when the lack of jurisdiction appears, applies to both actions at law and suits in equity. The trial court is not bound by the pleadings of the parties, but may, of its own motion, if led to believe that its jurisdiction is not properly invoked, 'inquire into the facts as they really exist.'").

award and the October 1, 2010 Judgment ultimately entered in Ms. Hodge's favor based on that award. In light of the discussion above, this Honorable Court should affirm that determination.

### E. Plaintiff-Appellant's Reliance on MCR 4.002(B) Is Wholly Misplaced.

Ms. Hodge makes a quantum leap when asserting that MCR 4.002(B) justifies what occurred before the district court during the trial of this matter. According to Ms. Hodge, "the court rule permits the district court to retain jurisdiction over the action, notwithstanding the affidavit demonstrating claimed injuries in excess of the jurisdictional limit." (Hodge's Brief on Appeal, p. 31). However, her argument is based upon a patent misinterpretation of MCR 4.002(B) which provides as follows:

> **(B) Change in Conditions.**
>
> (1) A party may, at any time, file a motion with the district court in which an action is pending, requesting that the action be transferred to circuit court. The motion must be supported by an affidavit stating that
>
> (a) due to a change in condition or circumstance, or
>
> (b) due to facts not known by the party at the time the action was commenced,
>
> the party wishes to seek relief *of an amount* or nature *that is beyond the jurisdiction or power of the court to grant*.
>
> (2) If the district court finds that the party filing the motion *may be* entitled to the relief the party now seeks to claim and that the delay in making the claim is excusable, the court *shall* order the action transferred to the circuit court to which an appeal of the action would ordinarily lie.

(Bold in original; underline and italics added).[17]

[17] While State Farm disagrees with Ms. Hodge's argument that "only a plaintiff" may file a motion to transfer pursuant to MCR 4.002, that argument is inconsequential to the resolution of this matter and need not be addressed.

The plain language of the Rule reveals that, if the moving party sufficiently establishes that s/he may be entitled to seek an amount that is beyond the jurisdiction of the district court to grant, then the district court is required to transfer the action to the circuit court. Ms. Hodge is correct in one aspect: As with any motion, the "district court may grant or deny the motion to transfer." (Plaintiff-Appellant's Brief, p. 30). However, the Rule ***does not*** provide, even under the most charitable interpretation, that, if the district court denies the motion, the moving party may still "seek relief of an amount…that is beyond the jurisdiction or power of the court to grant." MCR 4.002(B)(1). Such a result would be wholly illogical given the constraints of MCL 600.8301(1) and tantamount to the district court unilaterally choosing to enlarge its authority beyond what was actually granted to it by the Legislature.

As discussed in greater detail above (§C, *supra*), *Southfield Jeep, supra*, does not support Ms. Hodge's contentions. The defendant/counter-plaintiff in that case attempted to transfer the matter to the circuit court so that it could properly seek damages from the jury beyond what the district court had the jurisdiction and power to grant. There no discussion in the case that reveals the plaintiff contested the presentation of evidence of claims exceeding $25,000.00, and, given the ambits of *Bezeau*, 487 Mich at 455, n2, and *Reed*, 473 Mich at 540, the district court should have precluded presentation of evidence to the jury of any claimed damages more than $25,000.00, thereby restricting the amount in controversy to the court's actual jurisdictional limit. Nevertheless, *Southfield Jeep, supra*, does not, in any way, support the proposition that a plaintiff may present damage claims in excess of the jurisdictional limit of the district court and ***keep*** the case in the district court by gratuitously asserting that s/he is willing to take judgment on only the first $25,000.00 of the actual award.

## II. ACCORDING TO *FIX v SISSUNG*, 83 MICH 561; 47 NW 340 (1890), JURISDICTION IS NOT OBTAINED WHEN FRAUDUPON THE COURT IS APPARENT.

State Farm is unaware of Plaintiff and her trial counsel's exact motives for pursuing this action in the district court, yet requesting that the jury render a verdict in her favor in the amount of nearly $200,000.00. As opposed to "logical" (*see,* Plaintiff-Appellant's Brief, p. 35), it appears counter-intuitive that one would claim to be owed such a significant sum of money, yet ultimately choose to walk away with $25,000.00, notwithstanding the fact that the jury awarded her nearly three times that amount. What does appear evident is that, at the time Ms. Hodge commenced this matter on August 11, 2008, the amount in controversy between the parties exceeded $25,000.00 based on her attendant care claim alone (8/31/10 Tr., pp. 77-79, ***Exhibit 6*** ("Three hundred and thirty-six multiplied by 452 days is $151,822.00 to attendant care alone. I did that at the rate of $14.00 an hour. You all may decide that $14.00 an hour is too high, you may decide is too low. I didn't ask for the whole time period. I just went back to August of 07.")) Additionally, this action is not an isolated occurrence. *See, e.g., Moody, supra*; *Redmond v State Farm Mut Automobile Ins Co,* 2014 WL 6778903, an unpublished opinion of the Court of Appeals (Docket Nos. 313413; 315416) rel'd 12/2/14; *Sims v State Farm Mut Automobile Ins Co,* Wayne County Circuit Court Case No. 10-008339-AV (11/4/10 Hearing Tr., pp. 5, 9, ***Exhibit 10***).

Ms. Hodge's claim that she is permitted to present alternative theories of liability or alternative damages (*see,* Plaintiff-Appellant's Brief on Appeal, p. 38) is wholly contradicted by her own Complaint. The damages sought in this matter are all of one type – no-fault benefits arising out of an automobile accident that occurred on January 15, 2005 and allegedly owed as a result of State Farm's purported "Breach of Contract". (Plaintiff's Complaint, p. 1 and ¶¶ 4-10,

***Exhibit 1***). There is no alternative theory in this matter or "alternative damage" as contemplated under Michigan law. Rather, according to Ms. Hodge, State Farm "has refused or is expected to refuse to pay Plaintiff all personal protection insurance benefits in accordance with the applicable no-fault and contract provisions." *Id.* at ¶ 8. *See, contra*, *Cooper v Auto Club Ins Ass'n*, 481 Mich 399, 409; 751 NW2d 443(2008) ("A fraud claim is clearly distinct from a no-fault claim… Finally, under a no-fault cause of action, the insureds can only recover no-fault benefits, whereas under a fraud cause of action, the insureds may recover damages for any loss sustained as a result of the fraudulent conduct, which may include the equivalent of no-fault benefits, reasonable attorney fees, damages for emotional distress, and even exemplary damages.") (footnote omitted); *Van Zanten v H Vander Laan Co, Inc*, 200 Mich App 139, 140; 503 NW2d 713, 713 (1993) (plaintiffs sued repair contractor for damage to their home under three alternative theories: breach of contract, breach of warranty, and violation of the Consumer Protection Act (MCL 445.901, *et seq.*). Ms. Hodge's actions in this matter are belied by the fact that, if the amount in dispute in this matter, truly, was only $25,000.00, she, nevertheless, compelled State Farm to defend claims well in excess of that amount. This is particularly true when she did not seek damages alternative to no-fault benefits, such as in the *Cooper* case, *supra.*

Claims brought in bad faith are a fraud upon the court. *Fix v Sissung*, 83 Mich 561, 562; 47 NW 340 (1890). See also *Valentino v Oakland Co. Sheriff*, 134 Mich App 197, 207; 351 NW2d 271 (1984), aff'd in part and rev'd in part 424 Mich 310, 381 NW2d 397 (1986) ("A fraud is perpetrated on the court when some material fact is concealed from the court or some material misrepresentation is made to the court."); but see *Matley v Matley*, 242 Mich App 100, 101; 617 NW2d 718, 719 (2000) (holding fraud upon the court cannot be committed where both adverse

parties know the facts of the matter of which the court is unaware).

In *Fix v Sissung*, 83 Mich 561; 47 NW 340 (1890)., an action for replevin, the plaintiff alleged that his geese, impounded by his neighbor, the defendant, as trespassing beasts were valued at $200.00 such that subject matter jurisdiction within the circuit court was proper as the amount in controversy was in excess of the $100.00 within the justice of the peace's jurisdiction. However, the defendant proved to the circuit court that it had no jurisdiction, valuation of the geese showed their worth was $9.00. On appeal, the Supreme Court held that, "[w]hile values of property depend in a large measure upon opinion, this court, when the value is near the limit, will not declare in all cases a want of jurisdiction, if, in good faith, the declaration alleges the value within the jurisdiction of the circuit court; nevertheless, it will not hold that jurisdiction is obtained when the fraud upon the court is apparent, as it is in this case." *Id.* at 562.

Although not binding on this Honorable Court, the United States Supreme Court's opinion in *Horton v Liberty Mut Ins Co*, 367 US 348, 353; 81 S Ct 1570, 1573-74; 6 L Ed 2d 890 (1961) is instructive on this issue. In *Horton*, the plaintiff was a Texas employee injured on the job; the defendant was the employer's insurer. *Id.* at 349. The plaintiff filed suit under the Texas Workman's Compensation Law with the Texas Industrial Accident Board seeking the full amount of benefits available to him, 401 weeks of benefits at $35.00 a week, some $14,035.00. *Id.* After a hearing, the Board decided the plaintiff was only allowed 30 weeks of benefits, worth $1.050.00. *Id.* Under Texas law, both the employer and insurer are permitted to bring suit in the county where the accident arose if dissatisfied with the award. *Id.* The insurer brought suit in the appropriate federal district court, alleging that the plaintiff, though awarded $1050.00, was entitled to no worker's compensation benefits, but that the plaintiff had claimed and would claim $14,035.00, an amount sufficient to meet the federal court's diversity jurisdiction threshold at the

time. *Id.* The plaintiff, meanwhile, filed suit in the appropriate Texas court for the full amount of benefits. *Id.* at 250. The plaintiff subsequently moved to dismiss the federal court claim for want of subject matter jurisdiction, alleging the amount in controversy was only $1050.00. *Id.* At the same time, he filed a counter-claim against his insurer for the full $14,035.00 pursuant to FRCP 13(a). *Id.* The district court held the matter in controversy was limited to the award granted by the Board and the Fifth Circuit reversed. *Id.*

After granting cert, the Supreme Court ultimately held that the district court had jurisdiction over the matter. *Id.* The Court examined at length the effect of the 1958 Amendment to 28 USC 1332. *Id.* at 350-52. It determined that the amount in controversy was $14,035.00 because, although Texas had a state law limiting the amount in controversy to the amount claimed before the State Compensation Board, questions of federal jurisdiction are settled by examining federal law. *Id.* at 353. In its examination of whether the insurer stated the amount in controversy in good faith, the Court conducted the following analysis:

> The complaint of [insurer] filed in the District Court, while denying any liability at all and asking that the award of $1,050 against it be set aside, also alleges that [the plaintiff] has claimed, now claims and will claim that he has suffered total and permanent disability and is entitled to a maximum recovery of $14,035, which, of course, is in excess of the $10,000 requisite to give a federal court jurisdiction of this controversy. No denial of these allegations in the complaint has been made, no attempted disclaimer or surrender of any part of the original claim has been made by [the plaintiff], and there has been no other showing, let alone a showing 'to a legal certainty,' of any lack of good faith on the part of the respondent in alleging that a $14,035 claim is in controversy. **It would contradict the whole record as well as the allegations of the complaint to say that this dispute involves only $1,050.** The claim before the Board was $14,035; the state court suit of [the plaintiff] asked that much; the conditional counterclaim in the federal court claims the same amount. Texas law under which this claim was created and has its being leaves the entire $14,035 claim open for adjudication in a de novo court trial, regardless of the award. Thus the record before us shows beyond a

> doubt that the award is challenged by both parties and is binding on neither; that [the plaintiff] claims more than $10,000 from the respondent and the [insurer] denies it should have to pay [the plaintiff] anything at all. No matter which party brings it into court, the controversy remains the same; it involves the same amount of money and is to be adjudicated and determined under the same rules. Unquestionably, therefore, the amount in controversy is in excess of $10,000.

*Id.* at 353-54. (Emphasis added).

In reaching its decision, the *Horton* Court looked to the whole record when considering the amount in controversy for subject matter jurisdiction. Factually, the situation here is the reverse of the situation in *Horton*: State Farm is asserting the plaintiff's pleadings do not accurately list the amount in controversy and the amount in controversy is actually greatly in excess of what the plaintiff is claims, while the *Horton* insurer as the plaintiff preemptively alleged the plaintiff would inadequately plead the amount in controversy, and, by filing first was able to plead a more realistic representation of the actual amount in controversy. Nonetheless, the cases are analogous; an injured party seeking benefits from an insurer cannot artfully plead his amount in controversy to select a forum that he believes more advantageous when the actual amount he will seek defeats the subject matter jurisdiction of that forum.

The Court of Appeals and the Circuit Court appropriately vacated the Judgment entered in this matter in favor of Ms. Hodge due to the district court's lack of jurisdiction. That determination should not be disturbed on further appeal.

## RELIEF REQUESTED

Therefore, based upon the foregoing argument and analysis, Defendant-Appellee, State Farm Mutual Automobile Insurance Company, respectfully requests that this Honorable Court enter an Order:

a. Denying Plaintiff-Appellant's appeal in its entirety, particularly

since she has not established that the Court of Appeals committed reversible error when it determined that the district court lacked jurisdiction over this action given her demand that the jury return a verdict in excess of $160,000.00;

b. Affirming the Court of Appeals' opinion in this matter in all respects; and

c. Awarding State Farm all other relief to which it is entitled.

Respectfully submitted,

HEWSON & VAN HELLEMONT, P.C.

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Dated: May 18, 2015

**CERTIFICATE OF SERVICE**

Stacey L. Heinonen, being duly sworn, deposes and says that she is employed by the firm of Hewson & Van Hellemont P.C., attorneys for Defendant-Appellee, and that on May 18, 2015, she served a copy of the foregoing Defendant-Appellee, State Farm Mutual Automobile Insurance Company's, Brief on Appeal in Docket No. 149043 upon all counsel of record via the Court's electronic True Filing System.

BY: _/s/Stacey L. Heinonen_____
STACEY L. HEINONEN